

**NOT TO BE PUBLISHED**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

----

In re Leah S. et al., Persons  
Coming Under the Juvenile Court  
Law.

C059580

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos.  
JD220772, JD220773)

Plaintiff and Respondent,

v.

Marsha S. et al.,

Defendants and Appellants.

Marsha S., mother of Leah S. and Melissa S., and Ronald V., father of Leah S., appeal from orders of the juvenile court terminating the parental rights of mother and father. (Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> Mother and father contend the juvenile court committed reversible error in finding two statutory exceptions to termination of parental rights did not apply to these dependency proceedings. We shall affirm.

---

<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On July 16, 2004, Department of Health and Human Services (DHHS) filed original juvenile dependency petitions pursuant to section 300 on behalf of four-year-old Leah S. and eight-year-old Melissa S. Those petitions alleged in part that there was a substantial risk the minors would suffer serious physical harm due to the inability of mother to provide regular care for them as a result of mother's substance abuse. (§ 300, subd. (b).) The petition on behalf of Leah S. also alleged Leah S. was at risk due to mother and father's lengthy history of engaging in domestic violence in the presence of Leah S. (§ 300, subd. (b).)

The juvenile court sustained those petitions as amended, adjudged the minors dependent children, and ordered the minors removed from parental custody. The court also granted mother and father regular visitation with the minors and ordered mother and father to participate in reunification services. Thereafter, the court ordered the minors placed with mother and father under the supervision of DHHS.

The minors were bonded strongly to each other and to mother and father. However, on September 26, 2006, DHHS filed supplemental petitions on behalf of the minors, alleging substance abuse by mother and domestic violence between father and mother. The juvenile court found those allegations true and continued the minors as dependent children.

In a September 2007 DHHS report, the social worker reported Melissa had stated "she would like to live with" mother. However, both minors also said that, if they could not return to mother's custody, they would like to remain in their foster care placement, where they lived together. The minors had twice-weekly supervised visits with mother. At that time, DHHS recommended a permanent plan of guardianship for the minors.

A March 2008 report found that guardianship no longer was appropriate and now recommended adoption as the most suitable permanent plan for the minors. However, Melissa indicated she wished to return to mother's custody. Although the minors remained bonded with mother, their visits were reduced to once monthly. In an assessment report attached to the social worker's report, Melissa stated her desire to reunify with mother or to have a guardianship rather than be adopted. Leah expressed a wish for whatever disposition Melissa wanted.

The May 2008 report prepared for the section 366.26 hearing stated mother and father and the minors had a monthly supervised visitation schedule. That report noted some difficulties caused by mother during and after two visits with the minors. The social worker opined it was likely the minors would be adopted by their caregivers, with whom they had been living since April 2007, if parental rights were terminated.

A June 2008 addendum report stated that during two recent interviews both minors indicated they wished to be adopted by their current caregivers.

At the July 7, 2008 section 366.26 hearing, mother testified she was opposed to the adoption recommendation. According to mother, she enjoyed a good relationship with both minors, but wanted an even stronger one with them. Melissa also testified, telling the juvenile court that, if she could not be with mother, she wanted to be adopted.

Counsel for mother and father expressed opposition to the recommendation of DHHS to terminate parental rights, and both argued the beneficial relationship exception to adoption applied to the proceedings. Mother's counsel also cited the exception to adoption based on the objection of a minor 12 years of age or older to termination of parental rights.

In a lengthy ruling, the juvenile court rejected any statutory exception to adoption, found it likely the minors would be adopted, and terminated the parental rights of mother and father. In making its ruling, the court stated in part as follows:

"A couple of things, just to comment on the evidence before me. First of all, I think you are accurate that Melissa's testimony, as I understood it, was difficult for the child, but as I understood it, clearly, she put forth the idea that--and I think I actually heard the word 'if,' that 'if I could not go back to mom.' She recognized that if that's--what I took from her testimony was that if she can't go back with mom, she wants permanence through adoption. That is simply put, and that's the way I saw it, as well, so I think you are accurate in saying

that if she could not go back to mom, then she wanted the adoption, and she understood, as well, through her testimony that we are not talking about reunification now. [¶] So the issue then became whether or not she wants to be adopted, and her testimony is clear and convincing in my mind that she does, as hard as that is for her, and I'll talk more about that when it comes to the parental bond."

" . . . There is no doubt that the children share a bond with their mother, both children, specifically Melissa. I have her testimony in chambers and her outward signs, her crying and being upset about the prospect of an end, in other words, an end to the relationship. That's the way she saw it. If you terminate the parental rights, it's over; it's done. That's the way she viewed the relationship with mom, not considering at all any referral to the Consortium. Her viewing of termination of parental rights is accurate in that sense, and so it's clear that she has a bond with her mother, but that's not the sole question before the Court. That is the way I view the evidence.

[¶] First and foremost, the child does not, not consent to adoption. One of the issues raised at the outset was the parental bond exception and that it is a child over the age of 12 who objects to termination of parental rights. Well, she very clearly does not object to termination of parental rights, which the parental bond exception is the only standard upon which I must view the decision in this case."

"The Court notes then the next step at this kind of a hearing, since the Court has found that the children are likely to be adopted, is to determine whether or not there's anything to go against that, so to speak, or to cause me to believe that it would be detrimental to terminate parental rights, notwithstanding their adoptability. [¶] At the selection and implementation hearing held pursuant to Section 366.26, the Juvenile Court must make one of four possible alternative permanent plans for a child. The permanent plan preferred by the Legislature is adoption, so if the Court finds that the child is adoptable--in this case, children--then the Court must terminate parental rights. It's telling me that I have to since I have now found the children adoptable unless, that is, absent circumstances under which it would be detrimental to the child. [¶] Section 366.26--it was [subdivision] (c)(1)(A)--the parental bond exception that has been put forth this afternoon, is an exception to the preference for adoption, and that is if the Court determines that termination would be detrimental to the minor because the parents have maintained regular visitation and contact with the child. That is the case here. The parents have maintained regular contact and visitation with the children. [¶] But it also goes on and says, 'And the child would benefit from the continuing of that relationship,' and that's the issue in this case, so let's look at that. [¶] First, the Court notes that the parent has the burden of establishing this exception. The parent cannot simply claim entitlement to the exception provided simply by demonstrating

some benefit to the child from a continuing relationship with the parent or some detriment from termination of parental rights. The benefit to the child must promote the well-being of the child to such a degree as to outweigh the well-being that the child would gain in a permanent home with new adoptive parents. [¶] In other words, the Court has to balance the strength and quality of the natural parent-child relationship in a tenuous placement against the security and the sense of belonging that a new family would confer. So that if severing the . . . natural parent-child relationship would deprive the child of a substantial positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parental rights are not terminated. [¶] There has simply been no proof in this case of a substantial positive emotional attachment such that the child would be greatly harmed to overcome the preference for adoption in this case. [¶] The Court notes that in each of these cases, it has got to be examined on a case-by-case basis, taking into account variables, such as the age of the child, the portion of the child's life spent in [the] parent's custody, the positive or negative effect of interaction between the parent and the child, and the child's particular needs are some of the variables which logically affect the parent/child bond. [¶] So let's take a look at some of those. As to Leah, she is eight and a half years old. She is a young child. I would say that Melissa is also a young child at almost 13 years of age. The children have spent, at the very least, the last couple of years

out of the parents' care and custody. That is a substantial portion of their life. It is also true that they spent, prior to that, a substantial portion of their life in the parents' care. [¶] The positive or negative effect of interaction between parent and child. There's nothing with regard to the visitations that show particularly negative interaction, except for this one incident where the children became upset obviously at the behavior of the mother and the grandmother, but there is certainly a positive effective interaction between the children and the parents, specifically with regard to the mother. [¶] The father and the children interact appropriately at visits; although, he is somewhat less involved than the mother, according to the reports that I have before me, so there is a positive interaction between the children and the parents. [¶] The children's particular needs. They need stability. They need permanence. They don't have any particular needs that can only be met in certain homes; but in this case, there's nothing to say that their needs cannot be met in their current home that visitation between the parents, interestingly enough, as minimum as it has been for quite some time--I think mother testified, that for about a year now, it's only been about an hour at a time--and by her own testimony, which makes a certain amount of sense, is that, how can she have a substantial relationship with them at one hour a month? It's not a lot of time. So any real positive interaction would have been before. It would have been before the children were removed in this case. And I believe mom. She had positive interaction with the children, going to



the movies, going shopping, doing the hair, all of the kind of things that you would expect a mother or a father and child to do. [¶] But the Court notes that it is only in extraordinary cases that preservation of parental rights will prevail over the Legislature's preference for adoptive placement. Frequent and loving contact is simply not enough to establish a sufficient benefit to overcome the preference for adoption, absent a significant positive emotional attachment between parent and child. [¶] Now, I have Melissa's testimony before me, which does show a positive emotional attachment to her mother, and quite frankly, Melissa hit the nail on the head when asked, 'Why does it make you sad at the thought of not being able to see your mother anymore?' And her answer was, 'Because she is my mother.' That's what I would expect a child to say. [¶] In order to show such a significant and positive emotional attachment, however, the child would have to say something akin to, Not only because it's my mother but because she is good for me, that severing the bond with her will be detrimental to me because I will not be able to get through this, something to that effect. [¶] That's not what she said. She told us that adoption is what she wants because she wants permanence in her life, knowing that she can't get back to her mother. [¶] The Court cannot find that the benefit to the children in maintaining a relationship with the mother or the father outweigh[s] the well-being that they would gain in a permanent home with new adoptive parents. There is simply no evidence that that is the case, and, quite frankly, all of the evidence

is clearly and convincingly to the contrary that their well-being can only be gained with the permanence of a new home; and having found the children likely to be adopted, the Court, not--excuse me--the parents not having established their burden in establishing the exception are not able to convince this Court that there's detriment to termination of parental rights."

## **DISCUSSION**

### **I**

Mother contends the juvenile court committed reversible error in terminating parental rights because it found that Melissa did not object to the proposed permanent plan of adoption. According to mother, the first choice of Melissa was maintenance of a relationship with mother. Therefore, mother argues, the court should have ordered a guardianship, rather than adoption, as the appropriate permanent plan. Mother and father join in each other's arguments.<sup>2</sup>

Where a minor "12 years of age or older objects to termination of parental rights," the juvenile court may find "a compelling reason for determining that termination would be detrimental." (§ 366.26, subd. (c)(1)(B)(ii).)

During her testimony at the section 366.26 hearing, Melissa, who was within a month of her thirteenth birthday,

---

<sup>2</sup> For purposes of resolving this appeal, we presume, as father argues, that he has standing to pursue claims relating to Melissa S., who is not his daughter.

testified that, if she could not return to mother's custody, Melissa would like to be adopted by her current caregiver. Melissa also told the juvenile court her first choice would be to continue a relationship with mother. The court then engaged in the following colloquy with Melissa:

"THE COURT: So you understand that we are really not talking today about going back with mom? You understand that, correct?

[MELISSA S.]: Yes.

THE COURT: Okay. So since that's the case, you understand that we have to figure out how to make sure you have what we call 'permanence,' in other words, a stable home, the same friends, the same family, the same area, not being moved around in foster care, that kind of thing? Do you understand that?

[MELISSA S.]: Yes.

THE COURT: Is that important to you?

[MELISSA S.]: Yes.

THE COURT: And do you understand that the best that we could do for you would be adoption?

[MELISSA S.]: Yes.

THE COURT: That's the most permanent that we can get for you. Does that make sense to you?

[MELISSA S.]: Yes.

THE COURT: And since we can't get you back with mom, since that's not the issue today, the only issue is whether or not we should pursue adoption. Okay? Are you with me so far?

[MELISSA S.]: Yes.

THE COURT: And sometimes there [are] reasons why we shouldn't go to adoption. Sometimes kids have problems that prevent them from being adopted. You don't appear to have that, and so the only other issue that I can see here might be that you don't want to be adopted. You are telling us that you do. Is that right?

[MELISSA S.]: Yes.

THE COURT: And that you like your current placement, and things are going well there for you. Is that correct?

[MELISSA S.]: Yes.

THE COURT: Does it make you feel--is it hard for you to talk about adoption because you feel bad about your mom? Do you feel bad for her?

[MELISSA S.]: Yes.

THE COURT: Did you talk to the social worker about this?

[MELISSA S.]: About being adopted?

THE COURT: Yes.

[MELISSA S.]: Yes.

THE COURT: And you told them [sic] that you wanted to be adopted?

[MELISSA S.]: Yes.

THE COURT: And you understand what adoption means?

[MELISSA S.]: Yes.

THE COURT: Is there anything else you want to tell us?

[MELISSA S.]: No."

During further examination of Melissa by her counsel, the following colloquy occurred:

"[MINORS' COUNSEL]: I know that we have talked about a lot of different things where you and I have talked. We talked about guardianship and adoption, and I know they are kind of confusing. Do you understand that if you are adopted, that means that your foster parents become legally your parents now?

[MELISSA S.]: Yes.

[MINORS' COUNSEL]: Does that make sense? Are you still okay with being adopted, knowing that about adoption?

[MELISSA S.]: Yes.

[MINORS' COUNSEL]: And do you understand that that's forever? It's more than just when you turn 18?

[MELISSA S.]: Yes.

[MINORS' COUNSEL]: Is that something that you are okay with?

[MELISSA S.]: Yes."

During closing argument by counsel, the juvenile court summarized the testimony by Melissa, in part by saying: "The bottom line is, is that it appeared that [Melissa] understood that since we were not taking about reunification . . . that what we are talking about is whether or not she should be adopted and whether she wanted that kind of permanence, and the direct answer was, yes, that she did." Citing that observation by the court, mother argues the court erred in finding Melissa did not object to adoption "because her agreement to the plan of

adoption was conditioned on a false set of alternatives, i.e., reunification or adoption."

The record does not support mother's claim. First, as the record reflects, and mother and father do not dispute, the juvenile court discharged its statutory duty to "consider the wishes of the child." (§ 366.26, subd. (h)(1).) Moreover, the record contains abundant evidence of the wishes of Melissa. Social worker's reports filed throughout the dependency proceedings reflect sometimes conflicting and inconsistent feelings by Melissa regarding where she wanted to live. In light of the history of this family and the difficult life circumstances encountered by Melissa during her growing up years, those feelings hardly are surprising.

It is true, as mother suggests, that guardianship is an alternative to adoption as a permanent plan. (§ 366.26, subd. (c)(4)(A).) But it is also true that Melissa knew guardianship was an available alternative disposition for her. The social worker had discussed guardianship as an option with Melissa, and the record reflects that at one time Melissa indicated guardianship was her preference. However, the record reflects also that thereafter Melissa twice told the social worker she wished to be adopted. Moreover, during their questioning of Melissa both the juvenile court and Melissa's counsel referred to permanent plans other than adoption, including guardianship.

On the record before it, reflecting careful consideration of Melissa's wishes, the juvenile court concluded that Melissa

wanted the permanence afforded by adoption, assuming no return to mother was possible. Accordingly, the court concluded Melissa did not object to adoption. Substantial evidence supports that determination. Therefore, in not applying the statutory exception, the court committed no error.

## II

Mother and father claim the juvenile court committed reversible error in terminating their parental rights because the court's finding the minors would not benefit from continuing their relationship with mother and father is not supported by substantial evidence. Noting evidence of regular visitation, a long-term relationship, Melissa's stated desire to be with mother, and the strong bond existing between them, mother and father argue the record contains evidence that severance of that relationship would cause great harm to the minors.

"At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]" [Citations.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

Another of the circumstances under which termination of parental rights might be detrimental to the minor is: "The parents have maintained regular visitation and contact with the

child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The benefit to the child must promote “the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)).

The parent has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372-1373.) The juvenile court is not required to find that termination of parental rights will not be detrimental due to specified circumstances. (*Id.* at p. 1373.) Even frequent and loving contact is not sufficient to establish the benefit exception absent significant, positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

In this case, it is true mother and father had regular contact with the minors, and that a strong bond existed between



them, as the juvenile court recognized. It also is true the minors required permanency, and had been with their caregiver for more than a year. Moreover, the minors appeared to have developed "significant relationships" with their caregiver during that time.

Section 366.26 requires both a showing of regular contact and a separate showing that the child actually would *benefit* from continuing the relationship. *Autumn H.*, *supra*, 27 Cal.App.4th 567, interprets the statutory exception to involve a balancing test, and both *Autumn H.* and *Beatrice M.*, *supra*, 29 Cal.App.4th 1411, posit a high level of parental-type involvement and attachment. Even assuming those decisions overemphasized the importance of the parental role, the record here does not support mother's suggestion that the minors would benefit substantially from continuing their relationship with her primarily because of the length of time the minors had lived with her and the attachment existing between them. (Cf. *In re Amanda D.* (1997) 55 Cal.App.4th 813, 821-822.)

Mother and father suggest the record establishes the existence of a beneficial relationship between the minors and themselves, precluding a finding of adoptability. The juvenile court was authorized to conclude the contrary was true. Evidence of a significant parent-child attachment by itself does not suffice. Instead, the record must show such benefit to the minor that the detrimental effect of termination of parental rights would outweigh the benefit of adoption to the minors.

Here, as the court determined, the record was bereft of such a showing. Instead, there was evidence suggesting it was critical for the minors to obtain the benefits of a stable placement which, as we have seen, the record shows they were receiving in foster care.

In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, cited by mother and father, the juvenile court found it was in the best interests of the minors to establish a guardianship, rather than terminate parental rights, so the minors could maintain their relationship with their mother. (*Id.* at p. 1533.) Affirming, the Court of Appeal held substantial evidence supported the juvenile court's conclusion that terminating parental rights would be detrimental to the minors, because their mother had maintained regular, beneficial visitation with them. (*Id.* at pp. 1533, 1534, 1537, 1538.)

*In re Brandon C.*, *supra*, 71 Cal.App.4th 1530 is distinguishable from the proceedings here. The *Brandon C.* court found ample evidence of benefit to the minors of continued contact with their mother. (*Id.* at pp. 1537, 1538.) Here, by contrast, as we have seen, the record supports the juvenile court's conclusion that there would not be sufficient benefit to the minors if their relationship with mother and father were continued. Moreover, as the record also suggests, the minors had a need for stability and security, a need which only adoption could satisfy.

Mother suggests that because she had maintained a significant parent-child relationship with the minors, which included a long history together and regular contact while in placement, the circumstances of her case compare favorably with those found in other cases. We disagree. In *In re Casey D.* (1999) 70 Cal.App.4th 38, 51, cited by mother, the Court of Appeal did not find an "exceptional case" where a beneficial relationship existed that would preclude adoption. Accordingly, the court in *Casey D.* affirmed the order that terminated parental rights. (*Id.* at pp. 53, 54.) However, the court in *Casey D.* did recognize the possibility that a beneficial relationship might exist despite the absence of daily contact between parent and child. (*Id.* at p. 51.) The difficulty for mother and father here, as the juvenile court found, is that they failed to establish the requisite beneficial relationship with the minors, in the absence of which the exception does not apply.

Here, the issue was as follows: In light of the minors' adoptability, would a continued relationship with mother and father benefit the minors to such a degree that it would outweigh the benefits the minors would gain in a permanent adoptive home? Substantial evidence in the record supports the juvenile court's answer in the negative. On the record before it, the juvenile court could conclude, as it did, that only adoption, which is the preferred disposition (*In re Ronell A.*, *supra*, 44 Cal.App.4th at p. 1368), would promote the best

interests of the minors. As the record reflects, the juvenile court had before it ample evidence on the matter, including social worker's reports and the testimony of mother and Melissa.

The record shows the juvenile court acknowledged the strong attachment existing between mother and the minors and, contrary to father's claim, the court did not rely unduly on the limited contact mother and father had with the minors in rejecting application of the benefit exception to adoption. In fact, the court acknowledged that the minors had spent a substantial portion of their lives with mother and father and also evaluated the nature and quality of the visits, rather than focusing only on their limited number. We also reject mother and father's reliance on *In re S.B.* (2008) 164 Cal.App.4th 289, 299-300 and *In re Amber M.* (2002) 103 Cal.App.4th 681, 690, which involved improper consideration by the juvenile court and social worker of external factors pertaining to the strength of the parent-child relationship.

After it became apparent that mother and father would not reunify with the minors, the juvenile court had to find an "exceptional situation existed to forego adoption." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) In this case, on the contrary, after a comprehensive examination of the circumstances, the court determined the minors would not benefit from continuing their relationship with mother and father to such a degree that termination of parental rights would be detrimental to the minors. Mother and father had the burden to

demonstrate the statutory exception applied. We conclude they failed to make such a showing. Therefore, the court did not err in terminating their parental rights. (*In re Amanda D.*, *supra*, 55 Cal.App.4th at pp. 821-822.)

### **DISPOSITION**

The orders of the juvenile court terminating parental rights are affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, SCOTLAND, P. J.

\_\_\_\_\_, RAYE, J.